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Library News

New Staff

Lesley Brinker is one of our newest staff members. She is our LAN administrator. Lesley earned a BBA from Georgia Southern University with a major in Management Information Systems. After moving around the country, she landed in Arizona five years ago. She currently lives in Gilbert with her husband of two years and has two step-children. Lesley says her husband is also a "computer nerd." When at home, Lesley enjoys painting, sewing and fixing up her house. She is glad to be here and is excited about her new job.

Donna Northam has also joined the Law Library as a Law Library Aide. Donna was

born and raised in Goldthwaite, Texas. After graduating from high school, Donna attended Tarleton State University, University of North Texas, and Fort Hayes State University. Donna is married and has 4 children and 2 grandchildren. Donna moved to Arizona from Kansas 2 years ago. In her spare time, Donna enjoys reading and needlework.

New Photocopiers and Printers

In early December, the Law Library will receive new photocopiers. Please keep this in mind when adding value to your current copy card, as new copy cards will be issued and refunds for value remaining on the old cards cannot be given.

The new photocopier setup will include upgraded printing for our public computers. For the first time, there will also be a charge for public computer printouts.

Where's the Law Library Catalog?

Since our Horizon software upgrade in early September, that question has been heard frequently. The new version of Horizon no longer has one catalog for use in the Library and another for the web. All searching will be done from a web browser.

If you are in the library, opening Internet Explorer will display the Law Library's page on the Court Wide Web, with lots of useful links to research databases, legal news, and library information. In the right-hand corner, you will see links to WebPAC, our current catalog. Click on "Library Catalog Menu," or use the convenient quick keyword search box. Type in a word or two, click "Search,"

and WebPAC will search author, title, subject, and notes.

Behind the scenes, we have upgraded our aging software to the newest version of the Horizon Information Management System, to speed up and enhance circulation, cataloging, and other Library functions. We wish we could say that we went from Horizon 5.3 to Horizon 7.3 smoothly, in one great leap, but it wasn't that easy. The process involved multiple upgrades and migration to new database servers, and each step turned up new problems. We will be configuring both the Management System and the Information Portal over the next several months.

In the coming weeks, you will see more changes. The familiar WebPAC will be retired, and Horizon Information Portal, a catalog with a new look and more functions, will take its place. Horizon Information Portal will offer advanced searching options, better displays, and a My Account area. You will be able to e-mail book lists and citations, check to see what books you have out, and reserve and renew books. *WorldCat* and other databases will be available, along with a new combined searching feature that can access four databases with a single search query. You won't need to look for the new Information Portal. Just click the link on our web page, and one day it will appear.

Do You Know?

Test your knowledge of legal history:

1. When was the first full-fledged federal bankruptcy act passed?
2. Why was the first income tax established by the United States Constitution?
3. What country has the second-oldest surviving written Constitution?
4. When was the United States Constitution last amended?

5. On which of the following dates was the first copyright law passed: May 30, 1790; May 30, 1845; May 30, 1930?

On the Internet

Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs

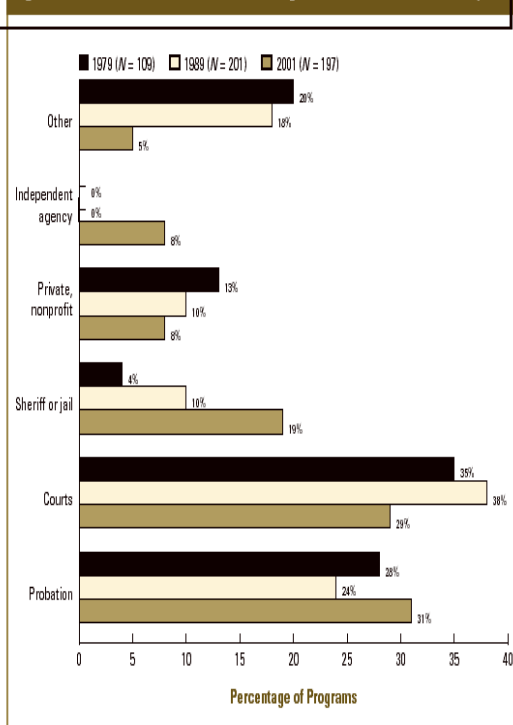
U. S. Department of Justice, Office of Justice Programs (July 2003)

www.ncjrs.org/pdffiles1/bja/199773.pdf

Pretrial Services Programming at the Start of the 21st Century: A Survey of Pretrial Services Programs is the third in a series of three reports (1979, 1989, 2001) that examines the progress and status of pretrial services programs.

Two hundred and two programs, from a variety of settings and jurisdictions, participated in the survey. Topics included:

- ❑ Characteristics of pretrial services programs including locations, size, staffing, hours, funding and jurisdictions;
- ❑ Comparisons to national standards for investigations, interviews, criminal records checks, risk assessment instruments, pretrial release recommendations, and follow-up procedures;
- ❑ Dealing with special populations such as defendants who have a mental illness, those accused of domestic violence, juveniles charged as adults, and women;
- ❑ The use of technologies such as drug and alcohol testing, electronic monitoring, and automated information systems;
- ❑ The relationship between effective pretrial services and jail crowding.

Figure 3. Administrative Locus of Pretrial Programs Across the Three Surveys

A review of the survey data prompted five recommendations for improvements:

- ❑ No category of defendant should be automatically excluded from investigation, except those charged with minor offences.
- ❑ Complete criminal records, especially out-of-state charges, should be compiled and accessible.
- ❑ Objective criteria should be used to determine risk factors so decisions are made consistently and validity of assessments can be determined.
- ❑ The status of detained defendants should be reviewed regularly to prevent unnecessarily prolonged detention.
- ❑ Failures-to-appear, re-arrest rates and other measures should be calculated regularly to assess the effectiveness of pretrial programs and procedures.

Recent Arizona Cases

Raye v. Phoenix City Prosecutor's Office

1 CA-SA 03-0001 (September 23, 2003)

This petition for special action raised the question whether a person under the age of twenty-one and charged with driving or being in physical control of a vehicle while there is any alcohol in the person's body, is entitled to a jury trial. Division One of the Arizona Court of Appeals has ruled that an underage drinking and driving offense is not a "jury-eligible offense."

The defendant, age 20, was cited for violating A.R.S. 4-244(33), the underage drinking statute, and tried in the Phoenix Municipal Court. Raye's motion for a jury trial was denied and he was subsequently found guilty. The defendant appealed to the Superior Court, which upheld the municipal court's ruling.

The Court of Appeals accepted jurisdiction "because Raye presents a pure legal question of first impression and has no further remedy by appeal." The defendant argued that a violation of A.R.S. 4-244(33) is eligible for a trial by jury because the statute is a "no tolerance DUI statute" and "as such carries the same moral quality as driving under the influence of intoxicating liquor," which is an offense eligible for a jury trial.

The Court of Appeals found that "the right to a jury trial for 'serious' offenses has been preserved for criminal defendants by both our federal and state constitutions" and that our state constitution "preserves the right to a jury trial in non-petty offenses." In distinguishing serious and non-petty offenses, the court must consider the following: "the relationship to the offense to common law crimes; the severity of the potential penalties made available by statutes; and the moral quality of the offense." The court stated that the potential penalty is the most significant factor to be considered, while the moral quality consideration is the more flexible of the three.

The penalty for a violation of the underage drinking statute, a class one misdemeanor, is a \$2,500.00 fine and six months in jail. The court relied on *Benitez v. Dunevant*, 198 Ariz. 90, 7 P.3d 99 (2000), in which the Arizona Supreme Court ruled that the penalties for underage drinking are not sufficient to trigger a right to trial by jury.

In discussing the moral quality of the offense, the court wrote that moral turpitude must involve behavior that is "depraved and inherently base." It is more than poor judgment or lack of self-control. The court in this case concluded that "[D]riving with a BAC of .01 or greater is not necessarily the same as impaired driving or driving with a BAC of .08 or higher" and, as such, a person charged with underage drinking may not be impaired. "Simply because an offense may be somewhat similar to DUI does not mean that the offense is automatically jury eligible. "

From Other Jurisdictions

Gator.com, Corp. v. L.L. Bean, Inc.

9th Circuit Court of Appeals, No. 02-15035 (September 2, 2003)

In its first ruling on Internet jurisdiction, the 9th Circuit has held that California courts can exercise jurisdiction over a company doing online business despite the fact that the company has no agent in the state and does not pay state taxes.

L.L. Bean (Bean), is a corporation with a principal place of business in Maine. A very large percentage of Bean's revenues comes from mail-order and Internet business. In 2000, the appellees sold millions of dollars worth of merchandise to California residents. In addition, Bean mailed a "substantial" number of catalogs to California addresses; solicited California residents via e-mail; and maintained numerous online accounts for customers located in California.

Gator.com is a Delaware corporation with a principal place of business in California. Gator.com develops and distributes a

software program that analyzes pre-selected URLs and displays a pop-up window that offers a coupon from a competing company. In this case, a visitor to Bean's web site was offered a coupon from Edie Bauer.

After receiving a cease-and-desist letter from Bean, Gator.com filed a declaratory judgment action in the federal district court. Bean then filed a Motion to Dismiss for lack of jurisdiction. The district court granted Bean's motion and Gator.com appealed.

Writing for the court of appeals, Judge Ferguson said that since there was no federal law applicable to the case, the court must "apply the law of the state in which the district court sits," i.e., California. Other California courts have developed a "continuous and systematic contacts" test for making out-of-state companies subject to the jurisdiction of the California courts. In reviewing Bean's contacts with the state of California, the court took into consideration "whether the defendant makes sales, solicits or engages in business in the state, serves the state's market, designates an agent for service of process, holds a license, or is incorporated there."

The court held that Bean had extensive contacts with vendors in the state and a website that "is clearly and deliberately structured to operate as a sophisticated virtual store in California," enough to support a finding of general jurisdiction. The court wrote that "our conceptions of jurisdiction must be flexible enough to respond to the realities of the modern marketplace."

Kern County Department of Human Services v. Monica C.

Court of Appeals, Fifth Appellate District No. F042652 (September 15, 2003)

This recent California case recognized for the first time that a half-sibling who cares for a child can be declared a presumed parent.

The appellant, Monica C., is the adult half-sister of Salvador who already had a

daughter of her own when Salvador was born. Monica C. was living with her mother who gave birth to Salvador when the appellant was 18. Salvador's father was a married man and was never identified by the mother. Both Monica C. and her mother cared for Salvador with Monica C. even breastfeeding him when his mother could no longer do so. Monica's mother, Rosa, died in an automobile accident three years after Salvador's birth. Monica C. continued to care for Salvador even after the birth of her second child, a son, in 2000. Salvador believed that Monica C. was his mother and that her children were his siblings. Monica's family and school officials were the only people who knew that Salvador was not Monica's biological child.

In 2002 Monica was arrested for possession of methamphetamine for sale. Her children, including Salvador, were placed in protective custody with the county's Human Services Department. After various hearings regarding custody of all three minor children, the court awarded custody of Monica's daughter to the biological father and ordered a reunification plan for the father and the son. For Salvador, Monica filed a "motion for de facto parent status and a motion to declare maternity" which was denied and Salvador was placed in long-term foster care.

The appellate court reversed the judgment of the trial court. The court wrote that the most compelling evidence in the case was the fact that Salvador believed that Monica was his mother. Even though other family members knew Monica was not Salvador's biological mother, the court "can reasonable infer from this record that family members went along with the fiction, at least in front of Salvador." The court wrote that "there is no competing maternal interest and to sever this deeply rooted mother/child bond would contravene the state's interest in maintaining the family relationship." The trial court was ordered to grant Monica C. "presumed mother status" and order a reunification plan for her and Salvador.

Article Review

Greacen, John M. and Julia Hosford Barnes. *"Unified Family Courts: Recent Developments in Twelve States."* 42 *Judges' Journal* 10 (Spring 2003).

Considering that one quarter to a third of all cases filed involve domestic relations matters, there is tremendous interest in the United States in developing a system to better serve families. Concerns about the way these cases are usually handled in trial courts have focused on five areas:

- 1) fragmented efforts because multiple judges and lawyers are involved;
- 2) insufficient resources;
- 3) ineffective services;
- 4) lack of therapeutic approach; and
- 5) growing caseloads.

There have been attempts over the years to solve the problems. In 1990, the National Council on Juvenile and Family Court Judges convened a conference on unified family courts; Congress enacted the American Safe Families Act; and in 2002 the Conference of State Court Administrators created a white paper on improving the nation's family courts.

As many as twenty-four states have made significant efforts to improve the way family cases are handled in trial courts. This article provides a synopsis of the efforts in some of those states.

Arizona created a committee to look at family issues in the Maricopa County Superior Court, which led to the Integrated Family Court (IFC) Project. Along with the IFC project there is the Domestic Relations Committee and the IFC Subcommittee (IFCS), which are developing a statewide proposal for an integrated family court. The IFC's report, *Recommendations of the Integrated Family Court Subcommittee to the Domestic Relations Committee: An Integrated Family Court Plan for Arizona*,

California is currently working on a unified family court system. This two-phase project also provides money to thirty-one volunteer

courts and began with six to twelve "mentor courts."

Colorado's Commission on Families in the Colorado Courts issued a final report in August 2002 that focused on developing a central case management process; providing nonadversarial alternatives; selecting and training qualified judicial officers; promoting community involvement; providing training for private attorneys; promoting ethics and professionalism.

Florida has been working to reform their family court system for over a decade. Key goals are: provide comprehensive training; improve technology; provide assistance to families to resolve disputes; and address "therapeutic justice goals" for the family's legal and non-legal problems.

Kentucky authorized a statewide family court in November 2002, with one judge to hear all of a family's issues and improve access to social service resources.

Maryland established family support services coordinators who create programs to help families, and act as liaisons.

Minnesota tested the one judge/one family project from July 1997 through the end of 1998, and the National Center for State Courts evaluated the program in November 2000. NCSC cited a lack of sound strategic planning which created obstacles for the participating courts and advised that the court implement a system for coordination with collateral agencies, create an advisory group, establish an evaluation plan, and ensure a functioning automation system is in place.

New Jersey has had a strong history of working for a unified family court since 1985. They have adopted a "middle ground" approach and have chosen to work toward the one judge/one family model, developing a statewide computer system allowing a court to see all matters involving a particular family, and dividing family court jurisdictions into four teams: divorce, family issues outside of divorce, delinquency, and juvenile dependency.

North Carolina's project to establish family courts and improve case management began in 1999. The project focused on time standards in family matters, case managers to improve service and clear up backlog, decreasing use of continuances, and increasing resources available to families.

Ohio has three pilot projects. Ohio emphasized an intake process that collects of information so that appropriate resources are used at the earliest possible point; aggressively managing cases to an early resolution; and providing alternatives to the adversarial model with opportunities for mediation, conciliation, arbitration, and diversion.

Vermont is working to make a more family-focused rather than a court-focused system by creating a team approach to work with the community to treat the family as a complex unit that cannot be changed by short-term means. They did not adopt the one judge/one family concept, but did use case managers to help with early assistance in case screening for referrals to outside services.

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Recent Articles From the Court Informer

In the September issue of the *Court Informer*, the most requested article was **"The Top Ten Things You Shouldn't Say in Court; Try to Avoid Arousing the Judge's Hackles."** The article, written by Douglas G. Carnahan, appeared in the September 8th issue of the *Los Angeles Daily Journal*. Below are additional articles that appeared in the same issue.

Chemerinsky, Erwin. "Closing the Courthouse Door." 37 *Clearinghouse Review* 79 (May-June 2003).

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Escher, Judge Patricia. "Pima County's Drug Court Works; Supervised Treatment, Probation, Cuts Costs, Crimes, Reduces Need to Jail Offenders." 104 *Arizona Capitol Times* 2 (September 5, 2003).

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4. 1992
5. May 30, 1790

Contributors

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Richard Teenstra
Jan Wolter

Do You Know? Answers

1. 1898
2. To fund the Civil War
3. Norway